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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: SEP 06 2005  
EAC 03 055 55673

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) subsequently incorrectly rejected the appeal as untimely filed. The AAO then reopened the matter on its own motion, but adjudicated the appeal prior to the expiration of the 30-day period within which the petitioner had to supplement the record. On January 18, 2005, the AAO again reopened the matter on its own motion and provided the petitioner an additional 30-day period in which to supplement the record. On February 3, 2005 the AAO received a request from counsel to extend the 30-day period to March 18, 2005. On February 4, 2005, the AAO granted this request. On April 25, 2005, the AAO adjudicated the appeal and indicated that it had not received supplemental evidence. On May 3, 2003, counsel faxed to the AAO a letter stating that the petitioner had sent a brief, which had been received by the AAO on March 18, 2005. Counsel resubmitted the brief on May 6, 2005. The matter is again reopened and the decision of April 25, 2005 is withdrawn. The matter is before the AAO on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides beauty enhancement services and products. It seeks to employ the beneficiary as an operations manager. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel states that the proffered position qualifies as a specialty occupation and submits additional evidence.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or

- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; (5) letters from the AAO; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an operations manager. Evidence of the beneficiary’s duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner’s response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail implementing industry-specific software for recordkeeping, organizing information, and billing; directing, planning, and implementing policies and objectives aligned with the business plan; directing business activities; analyzing operations and evaluating performance which determines cost reductions, investment needs, and other improvements; directing and coordinating financial and budget activities that fund operations, maximize investments, and increase efficiency; assigning responsibilities to subordinates, and overseeing production, sales, pricing, and distribution of products; supervising non-merchandising activities such as advertising, purchasing, credit, and accounting; recruiting, supervising, and aligning staff with core business needs; and participating in marketing managing risk exposure. The petitioner’s March 10, 2003 letter elaborated on the beneficiary’s duties. The petitioner indicated that the beneficiary was qualified for the proffered position based on her baccalaureate degree in hotel, restaurant, and tourism administration with majors in accounting and human resources management.

The director denied the petition, stating that the excerpt from the Department of Labor’s (DOL) *Career Guide to Industries* about management and public relations positions was inapplicable; it pertained to consulting services, whereas the beneficiary will be the proprietor of a salon and spa. The director found the proposed position resembles that of personal appearance workers as that occupation is described in the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*), and the director stated that the *Handbook* reports that this occupation does not require a bachelor’s degree in a specific specialty. The director found unpersuasive [REDACTED] statement that the proffered position qualifies as a specialty occupation; CIS, the director indicated, considers an evaluation of a person’s foreign education as an advisory opinion and that whether a position qualifies as a specialty occupation is determined according to the law. The director found the submitted job posting unpersuasive; that the petitioner did not establish that the industry or the proposed position requires a baccalaureate degree in a specific specialty; and that the beneficiary’s duties are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree.

In the appeal brief, counsel states that the petitioner generated \$241,012 during its first year, and refers to a financial statement for the period ended December 31, 2003. Counsel delineates the beneficiary's duties and role as the sole officer and director of the company, and turning to the *Handbook* and document entitled "Table 1," indicates that they show that the proposed position is analogous to the specialty occupations of budget analyst, financial manager, and high-level executive, and particularly a management consultant. Counsel asserts that the director failed to consider the beneficiary's duties associated with the beauty products division, and erroneously likens the proposed position to a personal appearance worker. Counsel indicates that the beauty products division requires an FDA application, which is being processed, before launching full-scale the importation and distribution of products. Counsel asserts that the salon-spa division has five full-time employees, uses the services of independent contractors, and will hire additional employees. To show that the petitioner provides services to New York City, counsel points to a contractual agreement with a public relations company and a magazine article. Counsel asserts that the director erroneously based his denial on the petitioner's size, and refers to Board of Immigration Appeal and AAO decisions to support her assertion.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* about the job duties and educational requirements of particular occupations.

The director determined that the proposed position is encompassed within the *Handbook's* classification of barbers, cosmetologists, and other personal appearance workers, which are occupations that do not require a bachelor's degree. The AAO finds that the proffered position is more analogous to that of general and operations managers as these occupations are described in the *Handbook*. The *Handbook* states that general and operations managers plan, direct, or coordinate the operations of companies; formulate policies; manage daily operations; and plan the use of materials and human resources. The *Handbook* further reports:

The formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts.

The *Handbook* continues:

Because many top executive positions are filled by promoting experienced, lower level managers when an opening occurs, many top managers have been promoted from within the organization. In industries such as retail trade or transportation, for instance, it is possible for individuals without a college degree to work their way up within the company and become managers. However, many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

The *Handbook* explains that candidates for general and operations manager positions are not required to hold a bachelor's degree in a specific specialty; employers accept degrees in business administration or the liberal arts or promote lower level managers who may not hold degrees. As such, the petitioner fails to establish that a baccalaureate or higher degree, or its equivalent, in a specific specialty is the normal minimum requirement for entry into the particular position, which in this case is an operations manager.

On appeal, counsel refers to the evaluation by ██████████ to contend that the proffered position qualifies as a specialty occupation. The AAO finds ██████████ opinion unpersuasive. In the evaluation, ██████████ asserts that a bachelor's degree in business is required for the proffered position; but ██████████ fails to provide independent evidence to substantiate his assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO disagrees with counsel's assertion that the proposed position is similar to the occupations of budget analyst, financial manager, and management consultant. In the *Handbook*, a budget analyst and a financial manager are depicted as spending their time with budgetary and financial matters. The evidence in the record does not depict the petitioner as generating sufficient income for the proposed duties that relate to budgetary and financial matters to rise to the level of those of a budget analyst or financial manager. The documents entitled "Compiled Financial Statements, Inception (October 15, 2002) to December 31, 2002"; "Forecasted Statement of Revenue and Expenses, Sixteen Months Ending December 31, 2004" and "Forecasted Statement of Revenue and Expenses (Cash Basis), Sixteen Months Ending December 31, 2003" do not disclose the petitioner's actual gross annual income. Yet, the level of income generated by the petitioner has a direct and substantial bearing on the scope, complexity, and depth of the proposed duties relating to budgets and financial matters. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel's claim that the proposed position is similar to a management consultant is not convincing. The *Handbook* indicates the following are the educational requirements of a management analyst:

Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field in which the worker plans to consult, in addition to a master's degree. Some will hire workers with a bachelor's degree as a research analyst or associate. Research analysts usually need to pursue a master's degree in order to advance to a consulting position. Most government agencies hire people with a bachelor's degree and no pertinent work experience for entry-level management analyst positions.

The *Handbook* statement, that most employers in private industry generally seek persons with a master's degree in business administration or a related field, establishes that a master's degree or its equivalent is normally the minimum requirement for entry into the particular position, management analyst. The *Handbook* then states that some employers in private industry hire workers with a bachelor's degree as a research analyst or associate, which are not management positions such as the position offered here. The AAO reads this paragraph in context as indicating that employers in private industry seeking to hire management analysts require a master's degree in business administration or a related discipline.

The director properly found the submitted job postings unpersuasive in establishing the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The employers differ in nature from the petitioner; they also do not have the same degree requirement as the petitioner. Solix Systems, a provider of enterprise solutions, prefers but does not require a bachelor's degree; J&B Software, a provider of check/lockbox processing services, requires either a bachelor's degree or equivalent experience; Scholastic Book Fairs, a provider of books, does not require a bachelor's degree in a specific specialty; Management Recruiters International (MRI) requires a bachelor's degree in engineering for the operations manager of a power plant, and its duties differ fundamentally from the proffered position; another MRI posting does not require a bachelor's degree in a specific specialty; Maybelline requires a bachelor's degree, but not in a specific specialty; L'Oreal USA Corporate does not require a bachelor's degree, and the duties of its position differ from those of the proposed position. The petitioner, a provider of beauty enhancement services and products, differs in nature from the following employers: New Moon Foundation (provides education and land restoration); Stryker Corporation (develops, manufactures, and sells surgical and medical products); Mosaic Sales Solutions (a marketing company); and Interface Data Systems (a manufacturer of membrane switches). Checkcare Systems does not disclose its nature.

No evidence satisfies the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A) by showing that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* explains that candidates for general and operations manager positions are not required to hold a bachelor's degree in a specific specialty.

No evidence establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Other than [REDACTED] evaluation, which the AAO has already discussed, there is no evidence in the record that would establish this criterion. The petitioner's evidence including the certificate of incorporation, financial and licensing records, insurance policy, lease agreement, bill of sale, magazine article, brochures, photographs, Business Enhancement Plan, financial documents, contractual agreement with a public relations firm, and trademark application notice do not establish that the nature of the position's duties are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.